

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

R.S.A. No. 3451 of 2007 (O&M)

Date of Decision : 15.10.2007

Moti Ram

..... Appellants

Versus

Mahender Singh & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.K.B. Sharma, Advocate
for the appellant.

VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff-respondent No.1 for specific performance of the contract, has been ordered to be decreed.

The plaintiff respondent No.1 brought a suit for specific performance for enforcement of an agreement to sell dated 3.6.1998 executed between the plaintiff and defendant No.1, for sale of land, for a total sale consideration of Rs. 3,85,000/- (Rupees three lac and eighty five thousand only). Out of that a sum of Rs. 3,00,000/- (Rupees three lac only) was received as earnest money-cum-part payment from the plaintiff respondent No.1 and it was agreed that sale deed would be executed on or before 30.6.1998 on payment of balance sale consideration. Liberty was also given to plaintiff respondent No.1 to get the sale deed executed and registered in his favour or in favour of his nominee.

The plaintiff pleaded that he was always ready and willing to perform his part of contract, however, defendant No.1 on 9.9.1998 executed

a sale deed in favour of defendant No.2 for a total sale consideration of Rs. 3,24,000/- (Rupees three lac and twenty four thousand only) in violation of the terms and conditions of the agreement to sell dated 3.6.1998. It was specifically pleaded in plaint that the agreement to sell dated 3.6.1998 was well within the knowledge of defendant No.2-appellant herein and the impugned sale deed dated 9.9.1998 was executed in order to create or cause wrongful loss to the plaintiff. The mutation in favour of the appellant defendant No.2 was also challenged. It was also the case of the plaintiff that in order to defeat the rights of the plaintiff appellant, respondents herein in collusion with each other createad a charge over the suit land by way of mortgage with defendant No.3. The mortgage was also challenged. It was also claimed that the defendants in collusion with each other, are threatening to dispossess the plaintiff from the suit land illegally and forcibly and also want to alienate the same further with a view to defeat the valuable and legitimate right of the plaintiff.

Defendants No.1 and 3, chose not to contest the suit. The suit was contested by defendant No.2 who filed written statement. It was claimed that he purchased the land in dispute for a total consideration of Rs. 3,24,000/- (Rupees three lac and twenty five thousand only) and sale deed was executed in his favour. It was also claimed that possession of the suit land was given to him in pursuance to the said sale deed. It was claimed that subsequent sale deed and mutation was valid. One of the pleas taken was that defendant No.2 had no knowledge of the agreement dated 3.6.1998 entered into between the plaintiff and defendant No.1. It was further claimed that defendant No.2 had mortgaged the suit land as owner thereof. Collusion with defendant No.1 was denied. It was pleaded that agreement to

sell dated 3.6.1998 was not in the knowledge of defendant No.2 or defendant No.3. Other preliminary objections were also taken.

The learned Courts below on appreciation of evidence have recorded a concurrent finding of fact that defendant No.1 had entered into an agreement to sell the suit property to the plaintiff/respondent No.1 for a sum of Rs. 3,85,000/- (Rupees three lac and eighty five thousand only). A finding has also been recorded that a sum of Rs.3,00,000/- (Rupees three lac only) had been paid as earnest money. The Courts below also come to the conclusion that the plaintiff was always ready and still ready and willing to perform his part of contract and it was defendant No.1 who had failed to perform his part of the contract. The sale deed in favour of defendant No.2 was held to be illegal, null and void and not binding on the rights of the plaintiff. The suit was held not to be collusive between the plaintiff and defendant No.1.

Defendant No.2 was not held to be bona fide purchaser for valuable consideration as claimed. The other issues arising out of the preliminary objections were decided against the defendant and in favour of the plaintiff and the suit was decreed.

One important aspect which was taken into consideration in decreeing the suit was that defendant No.2 had chosen not to appear in the witness box to prove his assertion of bona fide purchase for consideration. The plea of oral agreement to sell was also taken.

The learned counsel appearing on behalf of the appellant firstly argued that the Civil Miscellaneous application No. 9607-C of 2007 be allowed vide which he has prayed that the appellant be allowed to lead additional evidence by way of oral evidence of appellant defendant No.2,

who did not choose to appear in the witness box before the trial Court. The only reason given to adduce additional evidence is that he did not appear in the witness box due to the negligence on the part of the counsel in the trial Court which resulted in miscarriage of justice. It was also pleaded that statement of appellant is very much essential and necessary for imparting justice and his statement may also be required for the pronouncement of the judgment.

The application for additional evidence cannot be accepted as this is a glaring example for seeking additional evidence to fill up lacuna. The appellant did not choose to move any such application before the learned lower appellate Court. The findings recorded by the learned Courts below are based on evidence brought on record. In a suit for specific performance, it cannot be said that the statement of appellant is required for pronouncement of judgment qua the dispute between the parties as is sought to be pleaded in the present application rather it is the defence of the appellant that he is bona fide purchaser, therefore, there is no merit in this application and the same is accordingly dismissed.

On merits, the learned counsel, for the appellant vehemently contended that the judgments and decrees of the learned Courts below cannot be sustained as the same are violation of Section 19(b) of the Specific Relief Act as pleadings on record clearly prove that appellant defendant No.2 had paid the sale consideration in good faith without notice of original contract. In support of this contention he has placed reliance on the judgment of the Hon'ble Allahabad High Court in the case of ***Ram Lakhan Vs. Ram Govind and others AIR 1977 Allahabad 328***, and judgment of the Patna High Court reported in the case ***Rameshwar Singh Vs. Hari***

Narayan Singh and others AIR 1984 Patna 277 and the judgment of the Allahabad High Court (Lucknow Bench) in the case of *Banwari Lal and others Vs. Syed Muqtida Khan and another AIR 1955 N.U.C. 345*.

The contention of the learned counsel for the appellant was that for the purposes of Section 19(b) of the Act the subsequent vendee is not required to prove the bona fide purchase as envisaged under Section 41 of the Transfer of Property Act as he is not required to prove by leading evidence that he had made enquiries before the purchase about the title of the land to be sold. The contention of the learned counsel for the appellant, therefore, was that once the plaintiff has failed to plead in the suit that sale was without consideration and not in good faith the decree could not be passed. In support of this contention, the reliance is placed on the judgment of the Madras High Court in the case of *Sanga Thevar Vs. Thanukodi Ammal and others A.I.R. 1954 Madra 116*.

The learned counsel for the appellant also contended that once there was denial on the part of the appellant about the knowledge of the previous agreement in favour of the plaintiff respondent the onus of proving the bona fide purchase loses importance and in support of this contention he has placed reliance on the judgment of the Hon'ble Hyderabad High Court in the case of *Bagirithi Vs. Laxmibai A.I.R. 1953 Hyd. 121*.

I have considered the arguments raised by the learned counsel for the appellant and find no force in the same.

In order to succeed under Section 19(b) of the Act two conditions were required to be fulfilled i.e. the payment was made in good faith and the alienation was made without notice of the original contract. In this regard it is relevant to notice that in the plaint a specific plea was taken

that the agreement to sell dated 3.6.1998 was well within the knowledge of defendant No.2. It was further pleaded that the sale deed was executed in favour of defendant No.2 in order to create or cause wrongful loss to the plaintiff. This specific plea was supported by the evidence led by the plaintiff whereas defendants after denying the same chose not to appear in the witness box.

In view of what has been stated above, the appellant cannot drive any benefit from the provisions of Section 19(b) of the Specific Relief Act as he has failed to prove on record that the sale consideration was made without notice of agreement. Rather the evidence led by the plaintiff respondent that the sale deed was executed to defeat his right went un rebutted as the appellant chose not to appear in support of the case set up by him. The authorities relied upon by the appellant, therefore, does not in any way advance the case sought to be pleaded by the learned counsel for the appellant. The plaintiff respondent had taken a specific plea that the sale deed was not bona fide.

Thus, there is no merit in the contention raised by the learned counsel for the appellant nor does the appeal raise any substantial question of law.

No merit.

Dismissed.

15.10.2007
'sp'

(VINOD K. SHARMA)
JUDGE